

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

GERALD I. SMITH, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 18-1415-CFC/SRF
	)	
	)	
SEAN M. LYNN and LAW	)	
OFFICES OF SEAN M. LYNN,	)	
	)	
Defendants.	)	

**ORDER**

Plaintiff has filed objections (D.I. 29) to a Report and Recommendation of the United States Magistrate Judge (D.I. 26). Defendants have responded (D.I. 32). The matter is now before this Court.

The Magistrate Judge recommended that the Court grant Defendants' motion to dismiss the action with prejudice (D.I. 6), deny Plaintiff's motion for sanctions for bad faith conduct (D.I. 13), and deny Plaintiff's motion for a preliminary injunction and sanctions (D.I. 18). The Magistrate Judge had authority to make these recommendations pursuant to 28 U.S.C. § 636(b)(1)(B). This Court reviews de novo the Magistrate Judge's recommendations to which objections have been filed.

After review of the Magistrate Judge's Report and Recommendation, the Complaint, and the parties' submissions, the Court concludes that the motion to dismiss the action with prejudice should be granted. To the extent Plaintiff's complaint alleges violations of federal criminal statutes and the Delaware Rules of Professional Conduct, Plaintiff lacks standing, and dismissal is required under Federal Rule of Civil Procedure 12(b)(1). To the extent Plaintiff alleges a legal malpractice claim against Defendants, who were not his lawyers, he lacks standing and the claim fails as a matter of law. Accordingly, dismissal is required under Rule 12(b)(1) and (6). To the extent the complaint alleges "intentional negligence," that claim is not cognizable since negligence is, by definition, not an intentional wrong and therefore dismissal is required under Rule 12(b)(6). To the extent the complaint alleges civil conspiracy and intentional infliction of emotional distress claims, no fact alleged in the complaint would provide a basis for such claims and therefore those claims must be dismissed under Rule 12(b)(6).

The Court further concludes that Plaintiff's motion for sanctions should be denied because Defendants' filings are neither frivolous nor patently lacking in merit. Finally, the Court concludes that Plaintiff's motion for a preliminary injunction and sanctions should be denied as both moot and lacking in merit.

Accordingly, IT IS HEREBY ORDERED:

1. Plaintiff's Objections (D.I. 29) are OVERRULED;

2. The Report and Recommendation (D.I. 26) is ADOPTED;
3. Defendant's Motion to Dismiss (D.I. 6) is GRANTED;
4. Plaintiff's motion for sanctions for bad faith conduct (D.I. 13) is DENIED;
5. Plaintiff's motion for a preliminary injunction and sanctions (D.I. 18) is  
DENIED; and
6. The case is dismissed with prejudice.

9.23.19

Date



United States District Judge